



FISCAL MEMORANDUM

HB 248 - SB 213

March 14, 2023

SUMMARY OF BILL AS AMENDED (005821): Requires a person convicted of domestic assault involving strangulation or attempted strangulation to serve a mandatory minimum sentence of 30 days incarceration, which includes participation in programming that is evidence-based for domestic violence. Specifies that an offense of aggravated assault involving strangulation or attempted strangulation in which the victim of the offense loses consciousness due to strangulation, may be prosecuted as attempted first degree murder or attempted second degree murder. Enhances the penalty for aggravated assault involving strangulation or attempted strangulation, from a Class C felony to a Class B felony, if the victim was pregnant at the time of the offense.

Requires a person charged with aggravated assault or assault against a first responder or nurse that involves strangulation to post bail to reasonably ensure the appearance of the person as required, in addition to any other conditions of release imposed.

FISCAL IMPACT OF BILL AS AMENDED:

Increase State Expenditures – Net Impact – \$1,900 Incarceration

Other Fiscal Impact – Passage of the proposed legislation as amended may result in an increase in local incarceration expenditures; however, the precise timing and impact is dependent on multiple unknown factors and cannot be determined with reasonable certainty.

Assumptions for the bill as amended:

Domestic Assault

- Tennessee Code Annotated § 39-13-111(b) establishes that a person commits domestic assault who commits an assault as defined in Tenn. Code Ann. § 39-13-101 against a domestic abuse victim.
- Tennessee Code Annotated § 39-13-102(a)(1)(A)(iv) establishes that a person commits aggravated assault who intentionally or knowingly commits an assault as defined in § 39-13-101, and the assault involved strangulation or attempted strangulation.
- It is reasonably assumed a person who commits an assault against a domestic abuse victim that involves strangulation or attempted strangulation would be charged with domestic aggravated assault.

- Pursuant to Tenn. Code Ann. § 39-13-102(e)(1)(A)(ii), aggravated assault involving strangulation or attempted strangulation is a Class C felony.
- The proposed language requires a person convicted of domestic assault involving strangulation or attempted strangulation to serve a mandatory minimum sentence of 30 days incarceration, which includes participation in programming that is evidence-based for domestic violence.
- Pursuant to Tenn. Code Ann. § 40-35-501(cc)(1), as amended by Public Chapter 988 of 2022, a person convicted of aggravated assault involving strangulation or attempted strangulation on or after July 1, 2022 is required to serve 100 percent of the sentence imposed, provided that earned credits may reduce the sentence imposed by up to 15 percent.
- Based on information provided by the Department of Correction (DOC), there has been an average of 13.3 admissions per year for domestic aggravated assault over the last 10 years.
- The average sentence for a Class C felony offense of domestic aggravated assault is 4.49 years. Therefore, it is assumed that a person convicted of domestic aggravated assault under current law would serve 3.82 years ($4.49 \times 85\%$).
- While the proposed language establishes mandatory sentence minimums, this analysis assumes that the offender will serve the established average sentence length of 3.82 years.
- In addition, there has been an average of 16.2 convictions for domestic aggravated assault in each of the last five years where the offender received an average of 2.6 days pretrial jail credit before being sentenced to probation or community supervision.
- Of those 16.2 convictions, it is assumed 10 percent or 1.62 ($16.2 \times 10\%$) involved strangulation or attempted strangulation.
- This analysis assumes individuals convicted of a Class C felony offense of domestic aggravated assault involving strangulation or attempted strangulation will serve 27.4 additional days ($30 - 2.6$) incarcerated under the proposed legislation.
- Since offenders are housed in local jail while awaiting trial, it is reasonably assumed these individuals will remain in a local facility to serve the 27.4 additional days, as opposed to being transported to a state facility.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.96 percent per year (from 2018 to 2021).
- The weighted average operational costs per day are estimated to be \$52.11 for inmates housed at local facilities.
- The estimated increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 2,300	FY23-24
\$ 2,300	FY24-25
\$ 2,300	FY25-26

Attempted First or Second Degree Murder:

- Tennessee Code Annotated § 39-13-102(a)(1)(A)(iv) establishes that a person commits aggravated assault who intentionally or knowingly commits an assault and the assault involves strangulation or attempted strangulation.
- Pursuant to Tenn. Code Ann. § 39-13-102(e)(1)(A)(ii), aggravated assault is a Class C felony.
- The proposed language authorizes a person to be prosecuted for attempted first or second degree murder if the victim of the offense of aggravated assault involving strangulation or attempted strangulation loses consciousness due to strangulation.
- This fiscal analysis assumes that such persons will be prosecuted for attempted second degree murder.
- Tennessee Code Annotated § 39-12-107(a) establishes that criminal attempt is sentenced one classification lower than the most serious crime attempted.
- Pursuant to Tenn. Code Ann. § 39-13-210(c)(1), second degree murder is a Class A felony; therefore, attempted second degree murder is a Class B felony.
- The average sentence for a Class C felony offense of aggravated assault is 4.74 years. Therefore, it is assumed that a person convicted of aggravated assault under current law would serve 4.03 years ($4.74 \times 85\%$).
- The average time served for a Class B felony offense of attempted second degree murder is 5.95 years.
- Based on information provided by the DOC, there has been an average of 838.9 admissions per year for aggravated assault over the last 10 years.
- However, these admissions include offenses under Tenn. Code Ann. § 39-13-102(a)(1)(A)(i)-(iv). It is assumed that 10 percent, or 83.89 ($838.9 \times 10\%$) of these admissions involved strangulation or attempted strangulation.
- It can be reasonably assumed that five percent, or 4.2 ($83.89 \times 5.0\%$) of such admissions resulted in the victim losing consciousness due to strangulation.
- This analysis assumes individuals prosecuted and convicted of a Class B felony of attempted second degree murder involving strangulation or attempted strangulation where the victim loses consciousness due to strangulation and will serve an additional 1.92 years ($5.95 - 4.03$) incarcerated under the proposed legislation.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.96 percent per year (from 2018 to 2021).
- The weighted average operational costs per inmate per day are estimated to be \$50.63 for inmates housed at state facilities and \$52.11 for inmates housed at local facilities.
- Pursuant to Public Chapter 1007 of 2022, cost decreases are to be estimated on the actual estimated costs to be reduced over the next three-year period; therefore, the decrease in incarceration costs is estimated to be the following over the next three-year period:

Decrease in State Expenditures	
Amount	Fiscal Year
\$ (400)	FY23-24

\$ (900)	FY24-25
\$ (1,500)	FY25-26

- The proposed enhancement from a Class C felony to a Class B felony is resulting in decreased incarceration costs due to two factors: (1) the average operational costs per inmate per day are estimated to be lower for inmates housed at state facilities (\$50.63) than for inmates housed at local facilities (\$52.11); and (2) a higher percentage of inmates convicted of attempted second degree murder (98.46 percent) are housed in state facilities relative to inmates convicted of aggravated assault (67.75 percent).

Aggravated Assault – Pregnant Victim:

- The proposed legislation enhances the penalty for aggravated assault involving strangulation or attempted strangulation, from a Class C felony to a Class B felony, if the victim was pregnant at the time of the offense.
- It is assumed that 10 percent, or 83.89 (838.9 x 10%) of aggravated assault admissions involved strangulation or attempted strangulation.
- It can be reasonably assumed that one percent, or 0.84 (83.89 x 1%) of such admissions involved a victim who was pregnant at the time of the offense.
- Pursuant to Public Chapter 1007 of 2022, cost decreases are to be estimated on the actual estimated costs to be reduced over the next three-year period; therefore, the decrease in incarceration costs is estimated to be the following over the next three-year period:

Decrease in State Expenditures	
Amount	Fiscal Year
\$ -	FY23-24
\$ (100)	FY24-25
\$ (100)	FY25-26

- The proposed enhancement from a Class C felony to a Class B felony for aggravated assault involving strangulation if the victim is pregnant is resulting in decreased incarceration costs due to two factors: (1) the average operational costs per inmate per day are estimated to be lower for inmates housed at state facilities (\$50.63) than for inmates housed at local facilities (\$52.11); and (2) a higher percentage of inmates convicted of a Class B felony (83.59 percent) are housed in state facilities relative to inmates convicted of the Class C felony of aggravated assault (67.75 percent).
- Pursuant to Public Chapter 1007 of 2022, costs that include both increases and decreases are to be netted out on an annual basis for the next three fiscal years, with the cost increases based on the highest of the next three fiscal years and cost decreases based on actual estimated decreases for each of the three fiscal years; therefore, the recurring net increase in incarceration costs will be the following over the next three-year period:

Net Increase in State Expenditures	
Amount	Fiscal Year
\$ 1,900	FY23-24
\$ 1,300	FY24-25
\$ 800	FY25-26

- The recurring net increase in incarceration costs based on the highest of the next three fiscal years is \$1,900.

Bail Requirement:

- Pursuant to Tenn. Code Ann. § 40-11-116(b), if a defendant does not qualify for a release upon recognizance, then a magistrate is authorized to impose conditions to assure the defendant's appearance in court, including, but not limited to, the deposit of bail.
- Requiring a person charged with aggravated assault or assault against a first responder or nurse that involves strangulation to post bail to ensure the appearance of the person as required may result in an increase in local incarceration expenditures for persons unable to post bail.
- However, due to multiple unknown factors, such as the number of persons that will be charged with aggravated assault or assault against a first responder or nurse and be unable to post bail and the additional amount of time they would serve in local jail pending trial, the extent and timing of any such increase cannot be quantified with reasonably certainty.
- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- All calculations used in completion of this fiscal memo are available upon request.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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